

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #6	CCRB Case #: 201802881	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/05/2018 12:04 PM	Location of Incident: Claremont Parkway and Park Avenue	Precinct: 42	18 Mo. SOL 10/5/2019	EO SOL 10/5/2019	
Date/Time CV Reported Thu, 04/05/2018 1:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/13/2018 11:16 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Danny Aguilar	2496	941319	042 PCT
2. POM Anthony Alvino	04731	961613	042 PCT
3. POM Russell Booker	01167	960267	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Davila	10026	961723	042 PCT
2. POM Dennis Vargas	07471	957245	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino frisked § 87(2)(b)	
B.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino frisked § 87(2)(b)	
C.SGT Danny Aguilar	Abuse: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)	
D.POM Russell Booker	Abuse: Police Officer Russell Booker frisked § 87(2)(b)	
E.SGT Danny Aguilar	Abuse: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)	
F.POM Russell Booker	Abuse: Police Officer Russell Booker frisked § 87(2)(b)	
G.SGT Danny Aguilar	Abuse: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)	
H.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Russell Booker	Abuse: Police Officer Russell Booker searched the vehicle in which § 87(2)(b) was an occupant.	
J.SGT Danny Aguilar	Abuse: Sergeant Danny Aguilar supervised the search of the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On April 5, 2018, § 87(2)(b) filed this complaint with the NYPD's Internal Affair Bureau via telephone, generating the original log number 18-13054. On April 13, 2018, IAB forwarded this complaint to the CCRB.

On April 5, 2018 at approximately 12:04 p.m., after pulling over a vehicle driven by § 87(2)(b) and carrying § 87(2)(b) and § 87(2)(b) Police Officer Anthony Alvino of the 42nd Precinct removed § 87(2)(b) from the vehicle and frisked him (**Allegation A: Abuse of Authority, § 87(2)(g)**). Sergeant Danny Aguilar, PO David Davila, and PO Dennis Vargas, also of the 42nd Precinct, arrived on the scene. Under the supervision of Sgt. Aguilar, PO Alvino frisked § 87(2)(b) (**Allegations B and C: Abuse of Authority, § 87(2)(g)**). PO Alvino's partner, Police Officer Russell Booker, also of the 42nd Precinct, frisked § 87(2)(b) and § 87(2)(b) (**Allegations D through G: Abuse of Authority, § 87(2)(g)**). Under the supervision of Sgt. Aguilar, PO Alvino and PO Booker searched the vehicle (**Allegations H through J: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was issued two summonses, for § 87(2)(b).

There was surveillance footage capturing the majority of this incident (01 Board Review). There was Body Worn Camera footage associated with this incident, but this footage did not capture any of the conduct being investigated by the CCRB (02 Board Review; 03 Board Review).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Anthony Alvino frisked § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Anthony Alvino frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Russell Booker frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Russell Booker frisked § 87(2)(b)

Allegation (G) Abuse of Authority: Sergeant Danny Aguilar supervised the frisk of § 87(2)(b)

In his sworn statement to the CCRB (04 Board Review), § 87(2)(b) reported that, upon first approaching the stopped vehicle, and requesting § 87(2)(b)'s license and registration, PO Alvino stated verbally that he smelled the odor of marijuana. § 87(2)(b) denied smelling the odor of marijuana in the vehicle or in the area, and further denied that there was any marijuana paraphernalia visible inside the vehicle. § 87(2)(b) acknowledged that at least one passenger had smoked manufactured tobacco cigarettes prior to the officers' arrival, and noted that there was an ashtray containing the residue of this cigarette in plain view in the center console of the vehicle. PO Alvino ordered § 87(2)(b) to exit the vehicle. § 87(2)(b) was carrying cash, two plastic cards, a mobile phone, and keys on his person, and he acknowledged that these items may have produced bulges in his pockets. PO Alvino frisked § 87(2)(b)'s legs, crotch, and torso area. The officers then ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle and frisked them.

§ 87(2)(b) and § 87(2)(b) both provided brief telephone statements to the CCRB (05 Board Review, 06 Board Review) before being determined uncooperative with the investigation after failing to appear for multiple

scheduled interviews. In these statements, § 87(2)(b) and § 87(2)(b) were consistent with § 87(2)(b) in categorically denying that they smelled an odor of marijuana inside the vehicle or in the general vicinity. § 87(2)(b) and § 87(2)(b) were also consistent in stating that officers frisked all four occupants of the vehicle, with § 87(2)(b) adding that PO Alvino also searched her rear pants pockets.

In his statement to the CCRB, PO Alvino reported that, while approaching the civilians' vehicle from the rear, he first smelled the odor of marijuana from a distance of approximately two feet away. PO Alvino affirmed that he had previously received training in identifying the odor of marijuana. PO Alvino could not say whether he smelled raw or burning marijuana, although he stated that he did not observe smoke inside or emanating from the vehicle at any point. When § 87(2)(b) opened his window to speak to PO Alvino, PO Alvino assessed that the odor of marijuana was emanating from inside the vehicle. Sgt. Aguilar arrived on scene after being summoned to assist the officers. PO Alvino ordered § 87(2)(b) to exit the vehicle because he intended to search the vehicle due to the odor of marijuana. As § 87(2)(b) exited, PO Alvino observed "crumbs" of marijuana scattered on the floor in front of the driver seat, as well as in the vicinity of the shifter. PO Alvino observed a four- to five-inch bulge in one of § 87(2)(b)'s pants pockets that he suspected to be a firearm because it was "L" shaped, as well as a second bulge in another pocket. PO Alvino frisked the "L" shaped bulge and § 87(2)(b)'s waistband, and determined that § 87(2)(b) was carrying lighters, keys, and a mobile phone. PO Alvino then ordered § 87(2)(b) to exit the vehicle, observed a bulge in her front jacket pocket that appeared to be created by a hard-edged object, which he suspected to be a knife. PO Alvino frisked this pocket and determined it to contain keys.

In his statement to the CCRB, PO Booker reported that, while approaching the vehicle from the rear, he smelled the odor of marijuana. PO Booker affirmed that he had previously received training in identifying the odor of marijuana. PO Booker could not say whether he smelled raw or burning marijuana. When § 87(2)(b) opened his window to speak to PO Alvino, PO Booker assessed that the odor of marijuana was emanating from inside the vehicle. From his position outside the vehicle on the passenger side, PO Booker observed a postage stamp-sized plastic bag on the floor in front of the front passenger-side seat, as well as bulges on the persons of both § 87(2)(b) and § 87(2)(b) that appeared to be the approximate shape and dimensions of folded pocket knives. Sgt. Aguilar arrived on scene after being summoned to assist the officers. PO Booker ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle and frisked the bulges that he had previously observed. PO Booker further stated that he may have observed additional bulges and frisked additional areas on § 87(2)(b) and § 87(2)(b).

In his statement to the CCRB (13 Board Review), Sgt. Aguilar reported that, upon arriving at the location, he observed that all four civilians were inside their vehicle, that multiple windows in the civilians' vehicle were ajar, and that PO Alvino and PO Booker were standing at the rear of the civilians' vehicle. Sgt. Aguilar approached the officers and engaged them in conversation. The officers stated that they smelled a strong odor of marijuana. Sgt. Aguilar did not smell an odor of marijuana himself at this time (although he subsequently smelled the odor of marijuana emanating from the civilians after they exited the vehicle). Sgt. Aguilar ordered the officers to remove the occupants from the vehicle. Without receiving a specific instruction to do so, PO Alvino and PO Booker then frisked all four occupants.

None of the occupants of the vehicle was arrested or issued a summons for possession of marijuana.

PO Alvino and PO Booker prepared detailed Stop Reports documenting this incident (14 Board Review, 15 Board Review, 16 Board Review, 17 Board Review). The reports affirm that the officers “smelled an odor of marijuana stemming from inside the vehicle... [and] observed marijuana residue and paraphernalia.” The Stop Report prepared by PO Booker for § 87(2)(b) further states that § 87(2)(b) said to PO Booker, “I smoked before I got in the car.” (In his statement to the CCRB, PO Booker initially denied that any of the occupants of the vehicle verbally acknowledged possessing or using marijuana. When shown this Stop Report, PO Booker stated that his memory of this remark had been refreshed, and affirmed that § 87(2)(b) had verbally acknowledged smoking marijuana.)

Surveillance footage obtained of this incident is broadly consistent with the civilians’ and the officers’ statements. The footage shows PO Alvino frisking § 87(2)(b) s pockets, waistband area, torso, and legs shortly before Sgt. Aguilar arrives on scene. PO Alvino subsequently frisks § 87(2)(b) s pockets and torso area. PO Booker frisks first § 87(2)(b) s pockets, legs, coat hood, and hair, and then § 87(2)(b) s pockets and leg area. The resolution of the footage is not sufficient to determine whether any of the vehicle’s occupants has a bulge on her or his person.



Frisks.mp4

Courts have held since People v. Chestnut (18 Board Review) that “the smell of marihuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants.” Courts have also held since People v. De Bour (19 Board Review) that, if an officer has reasonable grounds to believe that an individual may be armed, the officer may take reasonable measures (such as a frisk) to determine whether the individual is carrying a weapon.

§ 87(2)(g)

[REDACTED]

Allegation (H) Abuse of Authority: Police Officer Anthony Alvino searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (I) Abuse of Authority: Police Officer Russell Booker searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (J) Abuse of Authority: Sergeant Danny Aguilar supervised the search of the vehicle in which § 87(2)(b) was an occupant.

In his sworn statement to the CCRB, § 87(2)(b) reported that, after all four occupants of the vehicle had been removed from the vehicle and frisked, officers, who he could not identify from among the officers on scene, entered and searched the vehicle. § 87(2)(b) reported that, prior to the officers' entering the vehicle, he verbally stated that he did not wish the officers to search the vehicle. § 87(2)(b) was unable to identify the locations within the vehicle that the officers searched, or otherwise describe the search.

In their telephone statements to the CCRB, § 87(2)(b) and § 87(2)(b) were generally consistent with § 87(2)(b). § 87(2)(b) stated that one or two officers, who he could not identify from among the officers on scene, entered the vehicle and conducted a search that included opening the glove compartment. § 87(2)(b) stated that all of the officers on scene entered the vehicle despite § 87(2)(b)'s verbal objection and conducted a search that included opening the glove compartment and center console.

In his statement to the CCRB, PO Alvino reported that he searched the civilians' vehicle solely because of the odor of marijuana. PO Alvino acknowledged searching the following areas: the center console, the visor above the driver seat, the driver door, and the floor around and under the driver seat, as well as the area of the rear driver-side seat. PO Alvino did not recall if he opened any compartments while conducting this search. PO Alvino reported that he located loose "crumbs" of marijuana on the driver seat and rear driver-side seat, as well as on the floor of the vehicle. PO Alvino also reported locating multiple postage stamp-size plastic bags, some of which contained trace amounts of apparent marijuana, on the floor in front of the driver seat and rear driver-side seat. PO Alvino did not take any enforcement action regarding this marijuana because doing so would have required him to gather the "crumbs" and plastic bags.

In his statement to the CCRB, PO Booker reported that he searched the civilians' vehicle because of the odor of marijuana. PO Booker acknowledged searching the floor and seats on the passenger side of the vehicle. PO Booker could not recall if he searched anywhere else in the vehicle, such as the glove compartment or center console. PO Booker reported that he located loose "crumbs" of marijuana and a single postage stamp-sized plastic bag. PO Booker did not take any enforcement action regarding this marijuana because doing so would have required him to gather the "crumbs" and plastic bag and because marijuana is not an enforcement priority.

In his statement to the CCRB, Sgt. Aguilar stated that PO Alvino and PO Booker asked him if, based on the odor of marijuana, they could search the civilians' vehicle. Sgt. Aguilar responded affirmatively to this question. PO Alvino and PO Booker searched the vehicle, although Sgt. Aguilar could not say where precisely they searched. Sgt. Aguilar could not recall if marijuana or marijuana paraphernalia was recovered in this search.

Surveillance footage obtained of this incident is broadly consistent with the civilians' and officers' statements. The footage shows PO Alvino and PO Booker entering both the front and rear doors of the civilians' vehicle and

spending approximately one minute inside. The footage does not show what actions the officers took inside the vehicle.



Vehicle search.mp4

A CCRB attorney was consulted for these allegations.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) has been a party (21 Board Review).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Sgt. Aguilar has been a member of service for 12 years and has been a subject in 13 cases and 19 allegations, of which two were substantiated (24 Board Review).
 - 201502107 involved substantiated allegations of a threat of force and discourtesy against Sgt. Aguilar. The Board recommended Instructions and the NYPD imposed Command Level Instructions.
 - § 87(2)(g)
- PO Alvino has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, none of which was substantiated. § 87(2)(g)
[REDACTED]
[REDACTED]

- PO Booker has been a member of service two years and has been a subject in two cases and three allegations, none of which was substantiated (26 Board Review).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 15, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (27 Board Review).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- According to the Office of Court Administration (OCA), § 87(2)(b) [REDACTED] has no history of convictions in New York City (31 Board Review).

Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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